

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES C. SITTS,

Plaintiff,

v.

3:20-CV-1476
(GTS/ML)

NEW YORK STATE; JEREMY HICKS, State Trooper
Investigator; BRIAN MACKEY, State Trooper
Investigator; SARA STEDMAN, State Trooper
Investigator; and JOHN MUEHL, Otsego County
Dist. Attorney,

Defendants.

APPEARANCES:

JAMES C. SITTS
Plaintiff, *Pro Se*
Otsego County Correctional Facility
172 County Highway 33W
Cooperstown, New York 13326

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by James C. Sitts (“Plaintiff”) against New York State, three State Trooper Investigators, and Otsego County District Attorney John Muehl (“Defendants”) alleging civil rights violations pursuant to 42 U.S.C. § 1983, is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that certain of Plaintiff’s claims be dismissed with prejudice and that the remainder of those claims be dismissed without prejudice and with leave to replead. (Dkt. No. 7.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (See generally Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Lovric has employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No.7) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further
ORDERED that the following claims asserted in Plaintiff's Complaint (Dkt. No. 1) are **DISMISSED** with prejudice and without leave to replead:

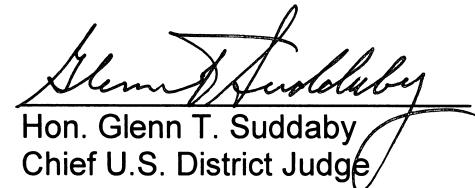
- (1) Plaintiff's claims against Defendant New York State;
- (2) Plaintiff's claims against Defendant Otsego County District Attorney Muehl;
- (3) Plaintiff's claims against Defendant State Trooper Investigators Hicks, Mackey and Stedman in their official capacities; and
- (4) Plaintiff's claims against Defendants Hicks, Mackey and Stedman in their individual capacities for perjury on the grand jury or suborning perjury; and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that the remaining claims asserted in Plaintiff's Complaint (Dkt. No. 1)—i.e., Plaintiff's claims against Defendants Hicks, Mackey and Stedman in their individual capacities for malicious prosecution, violation of the Due Process Clause, and violation of the Equal Protection Clause—**shall be DISMISSED with prejudice** and without further Order of this Court **UNLESS, within THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an **Amended Complaint** that cures the pleading defects identified in the Report-Recommendation; and it is further

ORDERED that, should Plaintiff file a timely Amended Complaint, it shall be referred to Magistrate Judge Lovric for his review.

Dated: May 12, 2021
Syracuse, New York



Hon. Glenn T. Suddaby
Chief U.S. District Judge